

JAN 18 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LYLE DOUGLAS ROBISON,

Defendant - Appellant.

No. 05-35281

D.C. Nos. CV-04-00053-DWM
CR-99-00052-3-DWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Federal prisoner Lyle Douglas Robison appeals the district court's order denying his motion pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. We have jurisdiction under 28 U.S.C. § 2253,¹ and we affirm.

Robison's contention that he is entitled to relief under *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 125 S. Ct. 738 (2005), 543 U.S. 220 (2005), is foreclosed because such relief is not available retroactively on collateral review. See *United States v. Cruz*, 423 F.3d 1119 (9th Cir. 2005) (holding that *Booker* does not apply retroactively in § 2255 proceedings where the conviction was final as of the date of *Booker*'s publication).

AFFIRMED.

¹Robison's failure to file the Notice of Appeal within 60 days of the district court's entry of its order denying the § 2255 motion does not render the appeal untimely because the district court never entered a separate judgment. *Williams v. Borg*, 129 F.3d 737, 739 (9th Cir. 1998).